

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

SHEILA PORTER

Plaintiff,

v.

ANDREA CABRAL, SUFFOLK COUNTY
SHERIFF'S DEPARTMENT and SUFFOLK
COUNTY

Defendant.

Civil Action No.04-11935-DPW

JOINT MOTION FOR RELIEF FROM JUDGMENT

The parties to the above-captioned action have tentatively agreed to settle the action. This settlement, however, is conditioned on the parties seeking and obtaining relief from the Judgment entered on January 23, 2006 as to Sheriff Cabral. As more fully described in the accompanying Memorandum in Support of Joint Motion for Relief from Judgment, to satisfy the conditions of the settlement, the parties jointly move this Court, pursuant to Fed. R. Civ. P. 60(b), to vacate the Judgment as to Sheriff Cabral.

Because the appeal of this action is currently before the United States Court of Appeals for the First Circuit ("First Circuit"), the parties request that this Court follow the procedure established in *Commonwealth of Puerto Rico v. The S.S. Zoe Colocotroni*, 601 F.2d 39, 42 (1st Cir. 1979). Following the prescribed procedure, the parties may file this Rule 60(b) Motion without seeking prior leave from the First Circuit. This Court should review the instant Motion "expeditiously, within a few days of [its] filing," and determine whether it "is inclined to grant the motion." *Id.* If this Court is so inclined, it should issue a "brief memorandum so indicating." *Id.*

A proposed form of “brief memorandum” is attached.

If this Court issues a “brief memorandum” indicating its inclination to grant the instant Motion, the parties will immediately request the First Circuit to remand this action to this Court. After remand, jurisdiction will be re-established in this Court and this Court will be authorized to issue an order of vacatur.¹

WHEREFORE, the parties to the above-captioned action respectfully move this Court to issue a “brief memorandum” indicating that it is inclined to grant the requested vacatur.

Respectfully submitted,

SHEILA PORTER,

By her attorneys,

/s/ David S. Schumacher.

Joseph F. Savage Jr. (BBO #443030)
David S. Schumacher (BBO #647917)
GOODWIN PROCTER LLP
Exchange Place
Boston, MA 02109
(617) 570-1000

Dated: November 9, 2007

ANDREA CABRAL, SUFFOLK COUNTY
SHERIFF’S DEPARTMENT, and
SUFFOLK COUNTY,

By their attorneys,

/s/ Ellen M. Caulo

Ellen M. Caulo (BBO #545250)
Deputy General Counsel
SUFFOLK COUNTY SHERIFF’S
DEPARTMENT
200 Nashua St.
Boston, MA 02114

¹ The parties will request that the order of vacatur be effective on the date that plaintiff receives payment from defendant, as contemplated in the settlement agreement executed by the parties.

(617) 961-6681

Dated: November 9, 2007

CERTIFICATION UNDER LOCAL RULE 7.1 AND
CERTIFICATE OF SERVICE

I, David S. Schumacher, hereby certify that counsel for Sheila Porter conferred with defense counsel in a good faith attempt to resolve or narrow the issues in this motion prior to its filing and defendants join in this motion.

I further certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on November 9, 2007.

Dated: November 9, 2007

/s/ David S. Schumacher

David S. Schumacher